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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

QIANG LU,) No. C 07-4221 SBA
Plaintiff,)
v.)
MICHAEL CHERTOFF, Secretary of the) JOINT CASE MANAGEMENT
Department of Homeland Security; et al.,) STATEMENT
Defendants.)

1. Jurisdiction and Service: There are no issues concerning personal jurisdiction. Plaintiff brought this Complaint under 28 U.S.C. §§ 1331 and 1361, and under the Administrative Procedure Act. All parties have been served.

2. Facts: On August 27, 2004, Plaintiff filed a Form I-485 application for adjustment of status to Legal Permanent Resident with USCIS. On the same day, a derivative I-485 application was filed on his wife's behalf. On August 17, 2007, Plaintiff filed this Complaint for a Writ in the Nature of Mandamus, alleging that Defendants are unlawfully withholding or unreasonably delaying action on his I-485 application, and asking the Court to compel USCIS to adjudicate both applications for adjustment of status. Plaintiff's name check is still pending with the Federal Bureau of Investigation. Plaintiff contends that his wife's name check remains pending; Defendants contend that the status of her name check is irrelevant to his claims.

1 3. Legal Issues: The principal legal issue the parties dispute is whether the Court has
2 jurisdiction to compel agency action in this case and if so, whether a writ a mandamus should issue
3 to remedy Defendants' alleged unreasonable delay in adjudicating Plaintiff's application.
4 Defendants also contend that as a pro se plaintiff, Plaintiff may not argue for any relief for anyone
5 other than himself, and that because his wife's application cannot be adjudicated until his application
6 has been decided, there is no delay on her application.

7 4. Motions: The parties anticipate that this case can be resolved through cross motions for
8 summary judgment.

9 5. Amendment of Pleadings: None.

10 6. Evidence Preservation: None.

11 7. Disclosures: The parties agree that this Court's review will be confined to the
12 administrative record and therefore this proceeding is exempt from the initial disclosure
13 requirements under Fed. R. Civ. P. 26.

14 8. Discovery: There has been no discovery to date and the parties believe this matter can be
15 resolved without discovery. No experts will be designated.

16 9. Class Actions: Not applicable.

17 10. Related Cases: None.

18 11. Relief: Plaintiff asks the Court to direct the agency to adjudicate his adjustment of status
19 application and the derivation application on his wife's behalf. This case does not involve damages.

20 12. Settlement and ADR: The parties filed a Joint Request to Be Exempt From Formal ADR
21 on December 4, 2007.

22 13. Consent to Magistrate Judge for All Purposes: Defendants did not consent to assignment
23 of this case to a United States Magistrate Judge.

24 14. Other References: None.

25 15. Narrowing of Issues: None.

26 16. Expedited Schedule: The parties believe this matter can be solved through the motions.

27 17. Scheduling: The parties propose the following briefing schedule:

28

1 Plaintiff's Motion for Summary Judgment: December 17, 2007¹

2 Defendants' Opposition and Cross Motion: February 12, 2008

3 Plaintiff's Reply and Opposition: February 19, 2008

4 Defendants' Reply: February 26, 2008

5 The parties believe this case is suitable for submission on the briefs without oral argument. Should
6 the Court desire oral argument, the parties propose the following date:

7 Hearing: March 11, 2008, at 1:00 p.m.

8 18. Trial: The parties believe the matter can be resolved through the motions for summary
9 judgment.

10 19. Disclosure of Non-party Interested Entities or Persons: None.

11 20. Such other matters as may facilitate the just, speedy and inexpensive disposition of this
12 matter: None.

13 Dated: December 7, 2007

Respectfully submitted,

14 SCOTT N. SCHOOLS
United States Attorney

15 _____/s/
16 MELANIE L. PROCTOR²
17 Assistant United States Attorney
Attorneys for Defendants

18 Dated: December 7, 2007

19 _____/s/
20 QIANG LU
Pro Se

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24 ¹Plaintiff acknowledges that this schedule allows Defendants an unusual amount of time to
25 respond, but due to planned travel, must file his motion by this date. Defendants' counsel has
26 scheduled and planned travel during December and January that prevents her from responding
earlier than the schedule suggests. In addition, Defendants' counsel is unavailable for a hearing on
the Court's first available date, as well as the Tuesday thereafter.

27 ²I, Melanie L. Proctor, hereby attest that I have on file all holograph signatures for any
28 signatures indicated by a "conformed" signature (/s/) within this efiled document.

CASE MANAGEMENT ORDER

The Joint Case Management Statement and Proposed Order are hereby adopted by the Court as the Case Management Order for the case, and the parties are ordered to comply with this Order. The Cross-Motions for Summary Judgment shall be taken under submission at the close of the briefing schedule. **IT IS SO ORDERED.**

Dated:

SAUNDRA BROWN ARMSTRONG
United States District Judge

ALTERNATIVE CASE MANAGEMENT ORDER

The Joint Case Management Statement and Proposed Order are hereby adopted by the Court as the Case Management Order for the case, and the parties are ordered to comply with this Order. The Cross-Motions for Summary Judgment will be heard on March 11, 2008, at 1:00 p.m.. IT IS SO ORDERED.

Dated:

SAUNDRA BROWN ARMSTRONG
United States District Judge